

REMARKS

Response to Specification

The disclosure is objected to because the specification pages have no page numbers. In response applicants have filed herewith a Substitute Specification indicating page numbering, as well as a Marked-Up Specification to show the addition of the page numbering. No new matter has been added.

Response to Claim Rejections Under 35 U.S.C. §102 and §103

The claims of the present application were rejected by the Examiner based upon Burbank et al. (U.S. P at. No. 6,471,700 B1). However, applicants believe that the Burbank et al. patent is not prior art against the present application. The present application is a continuation (SN 09/241,936) of a continuation (SN 09/159,467) filed on September 23, 1998, whereas, the '700 patent was a CIP of (SN 09/343,975) which was a CIP (SN 09/654,920), which was a divisional of (SN 09/241,936) which was a CIP of the application (SN 09/159,467) filed on September 23, 1998. The disclosure found in the present application extends back to at least September 23, 1998, whereas the disclosure of the '700 patent relied upon by the Examiner only extends back to the first CIP filed on June 30, 1999. Both the '700 patent and the present application claim priority to the application 09/057,303. Because the disclosure of the '700 patent relied upon by the Examiner, does not precede the effective filing date of the present claims, the reference is not prior art to the present application. None of the rejections put forth by the Examiner are supported by the '700 patent.

Additionally, even if the '700 patent was prior art against the present claims (which it is not) the reference fails to teach all the claimed features. Specifically, the

'700 patent does not teach a tissue cutting element disposed on the open distal end of the cannula lying in a plane traversing the longitudinal axis of the cannula.

The secondary references, which the Examiner combined with the '700 patent, do not, on their own support the Examiner's rejections.

Conclusion

Applicants believe that the pending claims define patentable subject matter. Reconsideration and an early allowance are earnestly solicited

Respectfully submitted,

By:


Edward J. Lynch
Registration No. 24,422
Attorney for Applicants

EDWARD J. LYNCH
Patent Attorney
One Embarcadero Center
Suite 562
San Francisco, CA 94111
Telephone: (415) 646-8028
Facsimile: (415) 433-5994